

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Figueroa Analyst: Rachel Coco Bill Number: SB 1543

Related Bills: See Prior Analysis Telephone: 845-4328 Amended Date: August 23, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Notify California Tax Education Council Of Tax Preparers Who Violate Regulations/FTB May Cite, Levy, And Issue Cease & Desist Orders

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended July 2, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 2, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would do the following:

- authorize the Franchise Tax Board (FTB) to enforce the laws regulating Tax Preparers, and
- prevent an accountant or Tax Preparer from disclosing confidential client information unless the client consents in writing.

This bill also would make numerous other changes to the Business and Professions Code. This analysis will only discuss those provisions impacting FTB.

SUMMARY OF AMENDMENTS

The August 23, 2004, amendments specify that FTB would not incur any costs associated with enforcing the laws regulating Tax Preparers until funding is provided. As a result of the amendments, the policy concerns and two of the implementation concerns discussed in the analysis of the bill, as amended June 16, 2004, are withdrawn. A revised "This Bill" discussion and the remaining implementation concerns have been included below. The remainder of the department's previous analysis still applies.

POSITION

No Position.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input checked="" type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

8/27/04

THIS BILL

This bill would require, rather than allow, FTB to notify California Tax Education Council (CTEC) when it identifies individuals preparing tax returns who are not registered with CTEC. In addition, this bill would transfer the authority to enforce the penalties for violating the rules governing Tax Preparers from the law enforcement agencies to FTB. This bill would also allow FTB to:

- cite individuals preparing tax returns in violation of the rules governing Tax Preparers,
- levy a fine on these individuals not to exceed \$5,000 per violation, and
- issue a cease and desist order, effective until the Tax Preparer is in compliance with the registration requirement.

This bill would specify that FTB would not begin enforcement actions until funding is provided to cover the associated costs. The bill states that the funding shall be provided via FTB's annual budget or through reimbursement from CTEC.

This bill also would, except in certain circumstances, prevent an accountant or Tax Preparer from disclosing confidential information concerning a client unless the client consents in writing.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following concerns related to the provision that would authorize FTB to enforce the laws regulating Tax Preparers. Department staff is available to work with the author's office to address these and any other concerns that may be identified.

- While this bill would authorize the department to issue cease and desist orders, the bill lacks language that would provide any authority for enforcement of the orders. In addition, this bill would authorize FTB to levy a fine; however, the bill does not provide the authority for the department to take collection action against a Tax Preparer if the Tax Preparer failed to pay the fine. Thus, the department could levy a fine but would have no authority to collect it.
- While the bill provides that a fine may be levied against an individual who is in violation of the laws governing Tax Preparers, the bill does not specify how the fine should be assessed. For instance, it is unclear whether, in the case of an individual working in an office, whether the penalty would be assessed to the company he or she works for or to the individual.
- This bill lacks a timeframe for a Tax Preparer to comply with any remedial measures. As a result, a Tax Preparer could be immediately fined upon discovery of a violation. This could have a negative impact on the department's relationship with Tax Preparers and taxpayers.
- In addition, it appears that a Tax Preparer would be unable to protest or appeal a fine issued by FTB. Consequently, a Tax Preparer would not receive due process and would be unable to dispute an erroneous fine.

Further, the department has identified the following concerns related to the provision that would prohibit accountants and Tax Preparers from disclosing confidential client information, except under certain circumstances.

- This bill lacks a definition of “confidential client information.” Consequently, it is unclear whether information that may be required by the department during audit would be considered “confidential” under this bill and thus unobtainable.
- In addition, while the language does exclude disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency, this exception fails to clearly permit disclosure to FTB. Currently, the department may contact an account or preparer that a taxpayer has designated as a power of attorney (POA). It is unclear whether the POA would be considered consent by the taxpayer under this bill. If not, the department would be required to obtain any necessary confidential taxpayer information from accountants or preparers using existing subpoena powers. In addition, judicial enforcement of routine subpoenas may become necessary if tax professionals construe this provision to prevent disclosure to tax agencies. As a result, this provision would have a significant impact on the department’s audit and legal functions.

The author may wish to amend the bill to specify what information would qualify as “confidential” and to clarify that state or federal taxing agencies would also be excluded from this provision.

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